

I. AGENCY OVERVIEW

A. Introduction

The Office of Citizen Complaint Review (OCCR) and its governing body, the Citizen Complaint Review Board (CCRB), were created by statute in 1999,¹ and OCCR opened to the public on January 8, 2001. The agency is independent of the Metropolitan Police Department (MPD), the District of Columbia's 3,800-member police force, and the D.C. Housing Authority Police Department (DCHAPD), the Housing Authority's 75-member police force, and its mission is to receive, investigate, and resolve police misconduct complaints filed by the public against MPD and DCHAPD officers. The agency was created by the District to fill the void left by the 1995 abolition of the Civilian Complaint Review Board, which was plagued by inadequate funding and staff, resulting in lengthy delays in the processing and resolution of complaints. The District's new police oversight office was the product of extensive research and careful thought by District officials and advocacy groups. The result was an agency with board members and staff who seek to employ the best practices of citizen oversight of law enforcement, and whose ultimate goal is to provide the public with an independent and impartial forum for the investigation and timely resolution of police misconduct complaints.

B. Agency Name Change

In 2004, the Mayor and the Council of the District of Columbia passed the "Omnibus Public Safety Agency Reform Amendment Act of 2004,"² which included provisions renaming OCCR and CCRB. The law, which took effect on September 30, 2004, renamed the office and the board to the Office of Police Complaints (OPC) and the Police Complaints Board (PCB). The Mayor and the Council renamed the agency in order to more clearly convey its mission.

Beginning on January 1, 2005, following a period to allow for implementation of the new names, OCCR and CCRB began to be known as OPC and PCB. When the new names were introduced, the agency's old logo was replaced with the logo depicted in Graphic A, which clearly displays the new agency name and includes two easily identifiable symbols of the District of Columbia – the stars and stripes from the District flag and the outline of the District.

Graphic A: Office of Police Complaints Logo



C. Police Complaints Board

According to its enabling statute, PCB is composed of five members, one of whom must be a member of MPD, while the other four must have no current affiliation with any law enforcement agency. All Board members must be residents of the District of Columbia, and they serve staggered three-year terms. The seat held by the MPD member was recently vacated by Inspector Stanly Wigenton, who served on the Board with distinction since it was created. After 26 years of service to MPD, and five years of service to the Board, Inspector Wigenton retired on December 11, 2004. In accordance with District law, the Mayor will nominate a new MPD member, who must then be confirmed by the Council, to fill the vacant seat. The other four members of the Board are as follows:

Maria-Cristina “Mai” Fernández, the Chair of the Board, is the Chief Operating Officer at the Latin American Youth Center (LAYC). Prior to joining LAYC, Ms. Fernández was an associate with a local law firm and worked as a Special Assistant to the Assistant Attorney General for the Office of Justice Programs at the U.S. Department of Justice. Ms. Fernández also spent two years as a prosecutor with the Manhattan District Attorney’s Office following her graduation from American University’s Washington College of Law. She received her undergraduate degree from Dickinson College and a master’s degree in Public Administration from Harvard University’s Kennedy School of Government. Ms. Fernández’s term expires on January 12, 2005.

Dr. Patricia Fisher is a licensed counseling and clinical psychologist with over 30 years of experience in the mental health and substance abuse fields. She has worked in and served as a consultant to a variety of governmental, private, and public organizations. Dr. Fisher, a native Washingtonian, has maintained a private practice in Washington for over 20 years and has been involved in several professional and community organizations. She received her undergraduate and master’s degrees from Howard University, and she earned her doctorate in counseling psychology from the University of Minnesota. Dr. Fisher’s term expires on January 12, 2007.

Michael Sainte-Andress is a community activist who has served as an appointee of two former mayors on the District’s Ryan White HIV Health Services Planning Council. Mr. Sainte-Andress has been an advocate on many issues affecting the District, including human and civil rights, voter registration, adult literacy education, arts education in public schools, HIV/AIDS issues, and gay/lesbian/bisexual/transgender issues. He is a motivational speaker and cultural diversity workshop facilitator, and has been a teacher, dancer, singer, actor, writer, and producer. He is a graduate of Lincoln University in Pennsylvania, and has served in the U.S. Navy. Mr. Sainte-Andress’s term expires on January 12, 2005.

Marc Schindler is a staff attorney with the Youth Law Center. Before joining the Youth Law Center, he served as an assistant public defender in Baltimore, where he represented children in juvenile delinquency proceedings. In 1996, Mr. Schindler received the Cahill Award, presented annually to an outstanding public defender in Maryland. He has conducted workshops throughout the United States and has written several publications dealing with legal issues related to children, with particular emphasis on improving the conditions of confinement for institutionalized children. Mr. Schindler received his undergraduate degree from Yale

University and his law degree from the University of Maryland School of Law. His term expires on January 12, 2006.

The Board meets on the first Monday evening of every other month. At these meetings, OPC management updates Board members about various issues, including developments in office infrastructure, outreach, and personnel matters. In addition, the Board is provided with a report of the complaints received by OPC, along with the disposition of these complaints. The Board takes an active role in the work of OPC, offering guidance on many issues affecting the operation of the office. The Board also is charged with reviewing the executive director's determinations regarding the dismissal of complaints, as well as making recommendations to the Mayor, the Council, MPD, and DCHAPD, where appropriate, regarding changes in policy that may decrease the level of police misconduct.

D. Office of Police Complaints

OPC operates under the supervision of its executive director, who is appointed by the Board. The executive director is assisted with the management of OPC by a deputy director, chief investigator, and assistant chief investigator. The office has its own investigative staff, which currently consists of three senior investigators and four staff investigators, all of whom take in and investigate complaints. By the end of January 2005, OPC expects to have hired three additional staff members into its investigative unit, including a fourth senior investigator, a fifth staff investigator, and a paralegal. The management team and investigators are assisted by an administrative officer, public affairs specialist, staff assistant, and investigative clerk/receptionist. In addition, OPC funds the employment of a recent public policy school graduate assigned to the agency from the District's Capital City Fellows Program, and the agency has developed an internship program that brings in college and law students year-round to assist the staff with its regular duties and special projects. Overall, the agency has worked to develop a racially diverse staff, which will only be enhanced with the addition of the new staff members. The diversity of the office generally mirrors the District's population, and includes a staff that is 52% African-American, 32% white, 11% Latino, and 5% multiracial.

The current members of OPC's staff are as follows:

Philip K. Eure became the agency's first executive director in July 2000 after working as a senior attorney in the Civil Rights Division at the U.S. Department of Justice, where he litigated on behalf of victims of employment discrimination. While at the Department, Mr. Eure was detailed in 1997-1998 to Port-au-Prince as an adviser to the Government of Haiti on a project to reform the criminal justice system. He has spoken at various forums in the District and around the country on a wide variety of police accountability issues. Mr. Eure received his undergraduate degree from Stanford University and his law degree from Harvard Law School.

Thomas E. Sharp, the deputy director, joined the agency in October 2002 from the law firm of Wilmer, Cutler & Pickering, where he was an associate in the firm's securities enforcement and regulatory practice. Prior to joining the firm, he served as staff counsel to Newark, New Jersey, City Councilman Cory Booker and as a law clerk to U.S. District Judge Myron H. Thompson in Montgomery, Alabama. Mr. Sharp has a bachelor's degree from the State University of New York at Buffalo and a law degree from Yale Law School.

Clifford C. Stoddard, Jr., the chief investigator, was appointed to his position in June 2003. Mr. Stoddard is a retired Special Agent from the U.S. Air Force Office of Special Investigations and former Assistant State's Attorney and Chief of the White-Collar and Computer Crime Division of the Anne Arundel County State's Attorney's Office in Annapolis, Maryland. He was an adjunct faculty member at the National Advocacy Center and has taught nationally for the National District Attorney's Association and the American Prosecutor's Research Institute on white-collar and computer crime subjects. Mr. Stoddard has a bachelor's degree from Southern Illinois University, Carbondale, and a law degree from the Georgetown University Law Center.

Kesha Taylor, the assistant chief investigator, was hired in July 2002. Prior to joining the agency, Ms. Taylor worked with the Investigations Division of the Public Defender Service for the District of Columbia for seven years. While there, Ms. Taylor served most recently as a Staff Investigator and as the Coordinator of the Internship Program. Ms. Taylor obtained her undergraduate degree in political science and English from the University of Vermont. She also received a master's degree in higher education from Cornell University.

As of the issuance of this report, OPC's other staff members are as follows:

Anthony Lawrence	Senior Investigator
Natasha Bryan	Senior Investigator
Mona Andrews	Senior Investigator
Megan Rowan	Investigator
Andrea Del Pinal	Investigator
Laura Longhenry	Investigator
Jorge Correa	Investigator
Sherry Meshesha	Investigative Clerk/Receptionist
Melanie Deggins	Public Affairs Specialist
Stephanie Banks	Administrative Officer
Sonja Wingfield	Staff Assistant
Bradley R. Hicks	Management Analyst/Capital City Fellow

OPC staff development and training are a high priority for the agency. All employees go through a training program that instructs them on the goals and purpose of the office, as well as the specific functions related to their jobs. Investigators attend training provided by MPD's Institute of Police Science, John E. Reid and Associates, and the Institute of Police Technology and Management at the University of North Florida in Jacksonville, Florida. In addition, all staff members are eligible for, and encouraged to attend, training programs and courses offered through the District Government's Center for Workforce Development, as well as other specialized training given by private entities and other District or federal agencies. The specific training described above is supplemented by bi-weekly staff meetings and weekly investigator meetings where the staff discusses different issues that arise in carrying out OPC's work.

E. Interns and Law Clerks at OPC

In the summer of 2001, the agency established a year-round internship program for both college and law school students. College interns assist with investigations, community outreach, and other projects in the office, while law school interns perform legal research on various policy issues. Interns volunteer their time and receive academic credit for their work during the academic year. Over the summer, budget permitting, interns receive a salary for full-time work. OPC's internship program has been an excellent way for the agency to stretch its limited budget by engaging talented students in the agency's work, while giving them valuable practical experience in exchange. The program has also been a valuable recruitment tool for the agency, with two former interns currently employed by the agency as investigators.

Since the internship program began, the agency has attracted many outstanding students. Through the fall of 2004, 30 college students and eleven law students have participated in the program. The college students have come from a variety of schools, including American, George Mason, George Washington, Harvard, Howard, and Niagara Universities, the University of the District of Columbia, the John Jay College of Criminal Justice, and St. Mary's College of Maryland. The law students have come from American University's Washington College of Law, Catholic University of America's Columbus School of Law, the Georgetown University Law Center, the George Washington University Law School, the Howard University School of Law, and the University of the District of Columbia's David A. Clarke School of Law. The internship program has provided substantial benefits to OPC and the District, and the office plans to continue hiring interns during each semester and the summer.

F. Complaint Process

OPC's work centers on the complaint process, which is set forth in the statute and regulations governing the agency. The public initiates the complaint process, so it begins only after a person has filed a written, signed complaint form with the agency. OPC has the authority to investigate complaints that are received within 45 days of the alleged misconduct and that allege abuse or misuse of police powers by MPD or DCHAPD officers, including:

- (1) Harassment;
- (2) Use of language or conduct that is insulting, demeaning, or humiliating;
- (3) Retaliation for filing a complaint with OPC;
- (4) Use of unnecessary or excessive force; or
- (5) Discriminatory treatment.

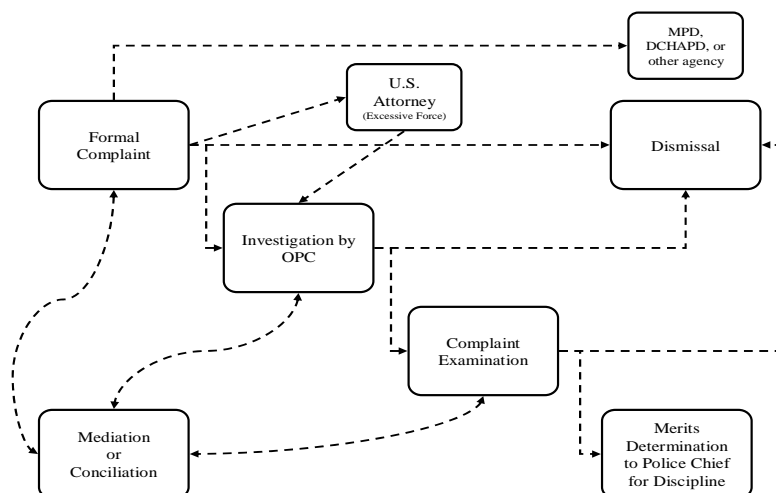
To ensure ease of access to its process, OPC has taken steps to facilitate the filing of a complaint. First, OPC's office is physically located away from MPD, DCHAPD, and other government offices to provide the public with a less intimidating environment in which to file a complaint. Second, to make it as convenient as possible to file a complaint, complainants may file in person at OPC's office or at any MPD district station, or they may initiate a complaint by mail, telephone, fax, or e-mail. Third, to ensure that non-English-speaking residents of and visitors to the District are able to get information about the agency and file complaints, OPC's information sheet and complaint form have been translated into 13 foreign languages.³ Finally, a

duty investigator is always available when the agency is open to assist the public with filing complaints, and to interview them about the allegations in their complaints.

After a complaint is received, the executive director reviews it to confirm that it is in OPC's jurisdiction, and to determine how to proceed with the processing of the complaint. If a complaint is outside OPC's jurisdiction, the executive director refers it to MPD's Office of Professional Responsibility, DCHAPD, or the appropriate agency for investigation. Also, if the complaint alleges conduct by an officer that may be criminal in nature, the executive director refers the complaint to the U.S. Attorney for the District of Columbia for possible criminal prosecution of the officer. For the remaining complaints, the executive director determines whether they should be investigated or mediated.

When a complaint is sent for investigation, it is assigned to one of OPC's staff investigators. The investigator interviews the complainant, subject officer, and any witnesses the complainant identifies, in addition to attempting to locate and interview any other police or non-police witnesses who may be able to provide relevant information. The investigator also collects and reviews other evidence, including MPD documents, hospital records, materials from other sources, the scene of the incident, and any other relevant information. When the investigation is complete, the investigator drafts an investigative report, which, along with all the evidence gathered in the investigation, is reviewed by a supervisor. The executive director then reviews the report of the findings of the investigation, and determines if the complaint should be dismissed, which requires the concurrence of one PCB member, or referred to a complaint examiner for review and a decision on the merits of the complaint. A flow chart depicting the complaint process is included in Graphic B. In addition, OPC's three principal methods of resolving complaints – dismissal, mediation, and complaint examination – are discussed in more detail below.

Graphic B: OPC Complaint Process



1. *Dismissal*

The statute and regulations governing OPC allow for the dismissal of complaints under three sets of circumstances: (1) the complaint is deemed to lack merit; (2) the complainant refuses to cooperate with the investigation; or (3) if, after the executive director refers a complaint for mediation, the complainant willfully fails to participate in good faith in the mediation process. Based on information gathered during OPC's investigation of a complaint, and with the concurrence of one PCB member, the executive director may dismiss a complaint when these circumstances arise. The dismissal process allows OPC to conserve resources and more efficiently handle complaints.

2. *Mediation*

OPC's complaint process includes mediation as a method for resolving complaints and, because OPC firmly believes in the benefits of mediation, appropriate complaints are forwarded to mediation on a regular basis. Mediation allows the complainant and the subject officer to meet face-to-face to attempt to resolve the issues raised in a complaint. The goal of OPC's mediation program is to give both parties a chance to work together to achieve a mutual understanding of what happened during their interaction and work out their differences without the stress and expense of a formal investigation and hearing.

A mediation service, the Community Dispute Resolution Center (CDRC), administers OPC's mediation program, assigning complaints to be mediated by a pool of well-trained, experienced, and diverse mediators. There is no cost to the complainant or the subject officer to participate in mediation, but both parties must sign a confidentiality agreement that provides that anything said by either party during the mediation session will not be disclosed outside of the session. The confidentiality agreement is required to encourage parties to be honest and open in attempting to resolve the dispute.

The decision to refer a complaint to mediation is made by the executive director, and not by the parties. If the executive director refers a complaint to mediation, both the complainant and the subject officer are required to participate in the mediation process in good faith. Failure to participate in good faith constitutes cause for discipline of the subject officer and grounds for dismissal of the complaint. However, even though participation of the parties is required, the outcome of the mediation is completely voluntary because neither the complainant nor the officer is required to reach an agreement or settle the dispute during mediation.

There are some restrictions as to which complaints may be referred to mediation. OPC will not refer complaints involving allegations of the use of unnecessary or excessive force that results in physical injury. In addition, an officer may not mediate a complaint if he or she has mediated a complaint alleging similar misconduct or has had a complaint sustained by OPC for similar misconduct in the past twelve months.

3. *Complaint Examination*

The complaint examination process is used to resolve complaints where the executive director determines that there is "reasonable cause to believe" that police misconduct occurred.

When the executive director reaches this determination, the complaint is referred to a complaint examiner who reviews it, along with OPC's investigative report, and issues a written decision regarding the merits of the complaint. The complaint examiner may resolve the complaint based on OPC's investigative report alone, or, if necessary, may conduct an evidentiary hearing to further develop the factual record. In practice, complaints that are neither dismissed nor successfully mediated are resolved through complaint examination, which is the only means by which OPC can issue a decision sustaining a complaint against an officer, although not all complaints that are referred to complaint examination are necessarily sustained.

If a complaint examiner sustains any allegation in a complaint, the executive director forwards the complaint examiner's decision to the Chief of Police for review and imposition of discipline. Under certain limited circumstances, the Chief may send a decision back to OPC for further review, but, otherwise, the Chief is bound by the decision and must impose discipline on the officer as a result of the decision. If the complaint examiner does not sustain any allegation in a complaint, the executive director dismisses the complaint based on the decision.

The complaint examination process is administered by JAMS, Inc., an outside alternative dispute resolution service. JAMS works directly with the members of the complaint examiner pool, who are responsible for rendering final decisions on the complaints referred to them by OPC. To carry out this important function, PCB and OPC assembled a pool of distinguished attorneys who live in the District of Columbia. In addition to having a reputation for competence, impartiality, and integrity, the complaint examiners must be members of the District of Columbia Bar, have practiced for five years or more, and have litigation or arbitration experience. At the end of fiscal year 2004, OPC's complaint examiner pool had 19 members. The pool includes attorneys who work in private practice, government, non-profit organizations, and academia, and have a variety of other experiences.

Based on its experience with the operation of the complaint examination process, OPC fine-tunes and modifies the process to ensure that it operates smoothly and provides adequate protections to officers and complainants. One change OPC implemented early in the process was an opportunity for officers to submit written objections to the complaint examiner about OPC's investigative report so the objections can be considered with the report. The objections ensure that the subject officer has an opportunity to raise any issues regarding the investigation before the complaint examiner takes any action. In addition, if a complaint examiner determines that an evidentiary hearing is necessary to resolve a complaint, OPC has taken steps to ensure that complainants have counsel available to assist them at no cost during hearings. In general, because officers are represented by attorneys provided to them by the police union, the Fraternal Order of Police (FOP), OPC made arrangements with a Washington-based law firm, Howrey Simon Arnold & White, to provide free counsel for complainants. Howrey is an international law firm that is based in Washington, D.C. The firm has over 600 attorneys worldwide, and more than 250 in Washington.